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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,988	07/07/2004	Amir Arav	26235	3129
20529	7590	05/14/2007	[REDACTED]	EXAMINER
NATH & ASSOCIATES 112 South West Street Alexandria, VA 22314			SAUCIER, SANDRA E.	
			ART UNIT	PAPER NUMBER
			1651	
			[REDACTED]	MAIL DATE
				DELIVERY MODE
			05/14/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/500,988	ARAV ET AL.
	Examiner	Art Unit
	Sandra Saucier	1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 01 February 2007.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 78 and 98-188 is/are pending in the application.
- 4a) Of the above claim(s) 116-118 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 78 and 98-115 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 07 July 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 3/9/05.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

DETAILED ACTION

Claims 78, 98–118 are pending. Claims 78, 98–115 are considered on the merits. Claims 116–118 are withdrawn from consideration as being drawn to a non-elected invention.

Election/Restriction

Claims 116–118 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to a non-elected invention. Election was made without traverse in Paper No. 2/21/07.

Specification

The disclosure is objected to because of the following informalities: The paragraph of the specification should reflect the claim for priority under USC 371. Appropriate correction is required.

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action: (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Claims 78, 98–115 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,873,254 [IDS].

The claims are directed to a method for changing the temperature of a sample comprising:

- (i) changing the temperature of the sample by subjecting it to a temperature gradient from an initial to an intermediate temperature,
- (ii) subjecting the sample to the intermediate temperature until the sample uniformly reaches the intermediate temperature,

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(iii) changing the temperature of the sample until it reaches a final temperature, wherein the sample exceeds 0.5 cm in at least one cross section and wherein the initial, intermediate and final temperatures are different and all progress in either a higher or lower sequence from one another.

US 5,873,254 teaches a method of changing the temperature of a sample comprising: subjecting the sample to a temperature gradient to change the temperature of the sample from an initial temperature to an intermediate temperature, held at the constant intermediate temperature, then changing to a final temperature (col. 5, ls. 40–60, col. 6). The reference lacks the stipulation of the size of the sample.

In the generic description of the invention (Summary of Invention), no limitation as to the size of the sample is described. Thus, the generic description is non-limiting with regard to size of sample.

While the size of the sample in the exemplification is ABOUT 1cm X 1cm x 0.5cm (col. 6, l. 15), use of the term “about” permits a variation of undefined range around this measurement, at the very least to ABOUT 2mm which is the size of the container. Please see MPEP 2144 IV A where it is stated that changes in size, shape or sequence of adding ingredients is obvious. Mere scaling up of a prior art process is not sufficient to patentably distinguish over the art.

One of ordinary skill in the art would have been motivated at the time of invention to make this substitution in order to obtain the results as suggested by the references with a reasonable expectation of success. The claimed subject matter fails to patentably distinguish over the state of the art as represented by the cited references. Therefore, the claims are properly rejected under 35 U.S.C. § 103.

Conclusion

Applicant should specifically point out the support for any amendments made to the disclosure, including the claims (MPEP 714.02 and 2163.06). It is applicants' burden to indicate how amendments are supported by the ORIGINAL

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disclosure. Due to the procedure outlined in MPEP 2163.06 for interpreting claims, it is noted that other art may be applicable under 35 USC 102 or 35 USC 103(a) once the aforementioned issue(s) is/are addressed.

Applicant is requested to provide a list of all copending applications that set forth similar subject matter to the present claims. A copy of such copending claims is requested in response to the office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sandra Saucier whose telephone number is (571) 272-0922. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, M. Wityshyn can be reached on (571) 272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sandra Saucier

Primary Examiner

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May 10, 2007